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August 29, 1994

Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W. Room 814
Washington, D.C. 20554

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Re: Implementation of Sections 3(n) and 332
of the Communications Act; Regulatory
Treatment of Mobile Services
GN Docket No. 93-252

Dear Chairman Hundt:

The following comment are submitted by the Utilities
Telecommunications Council (UTC) with respect to the
Commission's recent action, in GN Docket No. 93-252, to
"freeze" the acceptance of new applications for 800 MHz
Specialized Mobile Radio (SMR) licenses. Because of the
potentially detrimental impact of this action on UTC member
companies that have already expended considerable sums in
preparing and prosecuting applications for new SMR
facilities, UTC hereby requests the Commission to
immediately clarify that the freeze will not impact the
processing of any applications which were pending as of the
date of the freeze, and to instruct the staff to resume
processing of all pending 800 MHz applications.

In a News Release dated August 9, 1994, Report No. DC-
2638, the Commission announced that it had adopted a Third
Report and Order in GN Docket No. 93-252 which, among other
things, would immediately freeze the acceptance of new 800
MHz SMR applications pending Commission action on a
forthcoming Further Notice of Proposed Rule Making in PR
Docket No. 93-144. The News Release described the freeze
as follows:

...The Commission concluded that competitive
bidding procedures should be used for selecting
among mutually exclusive applications in the 800
MHz band. The Commission further decided that in
light of the changes to be implemented in 800 MHz
licensing, acceptance of new 800 MHz SMR
applications (including SMR applications for
General Category channels) will be suspended.

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effective immediately, until new licensing rules are adopted.

Although News Releases are not official expressions of Commission action or policy, in this case the effect is the same: staff acceptance and processing of 800 MHz SMR applications has been suspended. In addition, uncertainty over the scope of the freeze order has created confusion in the industry and serious concern that the Commission might be inclined to dismiss all pending SMR applications in order to subject these applicants to new competitive bidding procedures.

Since the apparent intent of the freeze order is to prevent the filing of speculative applications while the Commission reviews its licensing policies for 800 MHz SMR systems, there is no policy reason why that order should be applied to pending applications.

In the Further Notice of Proposed Rule Making, FCC 94-100, released May 20, 1994 (FNPRM), the Commission noted that the 800 MHz band is "heavily occupied in virtually all major markets and in many secondary markets and rural areas as well." The Commission therefore questioned whether multi-channel, wide area SMR licensing would produce significant benefits, or whether it "might actually impede the growth of wide-area service." (FNPRM, para. 32). At no point did the Commission express concern that its actions (or potential actions) in this docket would lead to an increase in the filing of speculative applications. If the Commission did have such concerns, one might have expected the Commission to adopt a freeze order at that time.

On the other hand, if the freeze is intended to maintain the status quo, to the extent possible, in order to preserve sufficient channels for the licensing of multi-channel, wide area systems, there is no reason to suspend processing of pending applications. Under the Commission's first-come, first-served licensing procedures, pending applications are entitled to consideration before newly filed applications. 47 C.F.R. §90.611. Thus, even if the Commission ultimately decides to reserve certain channels for wide-area licensing, the pending applications must be processed before the newly filed wide area applications can be considered.

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In any event, it would be improper for the Commission to dismiss all pending 800 MHz SMR applications which were filed under existing first-come, first-served licensing procedures. To the extent any of these applications are mutually-exclusive, they are so because of the Commission's current application processing rules. If the Commission were to return all pending applications in order to subject them to its recently announced competitive bidding procedures, this action would conflict with Section 309(j)(6) of the Communications Act, as amended, which provides, in pertinent part, as follows:

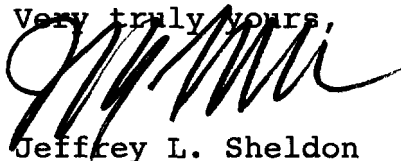
(6) RULES OF CONSTRUCTION. - Nothing in this subsection, or in the use of competitive bidding, shall --

. . .
(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;...

Thus, to the extent there are pending 800 MHz SMR applications which are not mutually exclusive, it would be inconsistent with Section 309(j) for the Commission to dismiss those applications and thereby subject them to the potential for mutual exclusivity and the necessity of competitive bidding.

In conclusion, UTC urges the Commission to promptly clarify the scope of its freeze order so that, at a minimum, this action will not further delay or prejudice the processing of pending 800 MHz applications.

Very truly yours,



Jeffrey L. Sheldon
General Counsel

cc: Commissioner James Quello
Commissioner Andrew Barrett
Commissioner Rachelle Chong
Commissioner Susan Ness
Ralph Haller, Chief, Private Radio Bureau